Supreme Court, U.S.
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No. 88-153

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

TEXACO PETROLEUM COMPANY, ECUADORIAN GULF OIL COMPANY and GULF OIL CORPORATION (NOW, BY CHANGE OF NAME, CHEVRON U.S.A. INC.),

Petitioners,

vs.

PHOENIX CANADA OIL COMPANY, LIMITED,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Was it improper for the lower courts not to apply a rule of *stare decisis* to an eleven-year old decision of the Supreme Court of Ecuador, a civil law jurisdiction in which judicial decisions bind only the parties and have no precedential value, especially where the record shows that lower courts in Ecuador do not themselves attempt to follow higher court decisions, including the decision in question?

2. Where the evidence on prejudgment interest included (i) conflicting expert opinions and (ii) several lower Ecuadorian court judgments applying the pertinent law in different manners depending on the circumstances of the particular case, was it improper for the lower courts in this case to apply the

law in question in the manner most suitable to the circumstances of this case?

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STATEMENT OF THE CASE

After a month long trial in 1986 on issues relating to unjust enrichment (See Plaintiff's pending Petition for Certiorari in No. 88-158) and breach of contract, Plaintiff won a judgment of $365,479 on the latter claim for deficient royalty payments in 1973 and 1974.

Both sides agreed that prejudgment interest accrued on this amount, that it should be calculated according to the law of Ecuador, that prejudgment interest in contract cases in Ecuador is calculated from the date the summons is served, and that such interest was therefore due from December 1976. Both sides also agreed that the rate to be applied was the legal interest rate in Ecuador, and that the legal rates in

Ecuador during the relevant time period were as follows (D3)[1]:

1/29/75 through 1/16/82:	8%
1/17/82 through 3/24/83:	15%
3/25/83 through 10/18/83:	16%
10/19/83 through 6/15/84:	19%
6/16/84 through 12/10/84:	21%
12/11/84 through judgment:	23%

The sole disagreement was over which rate or rates to apply. Defendants contended that under Ecuadorian law the applicable rate was fixed at 8%, the rate in force when the summons was served. Plaintiff contended that the increasing legal rates applied.

Plaintiff relied on the letter opinion of its expert, Dr. Rene Bustamante Munoz, dated June 11, 1985,

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[1]Designations in this form refer to Petitioners' Appendix.

supplied to Defendants long before trial (D1-D3)[2]. The only evidence Defendants offered to support their contrary theory was a post-trial affidavit dated December 9, 1986 from their expert, Dr. Miguel Andrade Varea, with extensive exhibits. (C1-C38).[3] Plaintiff responded by submitting a second opinion letter from Dr. Bustamante dated November 20, 1986 (not reproduced in Petitioners' Appendix) which reaffirmed his prior opinion and certified that the 23% legal

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[2]Dr. Bustamante is a practicing member of the Ecuadorian bar, a professor of civil law in Ecuador and, in prior years, held public office as Ecuador's Superintendent of Companies, Superintendent of Banks and Secretary of Congress (RA22-RA26). Dr. Bustamante testified at trial in connection with other issues. Although Defendants cross-examined him extensively, they did not cross-examine him as to prejudgment interest.

[3]Defendants never called Dr. Andrade as a trial witness, thus foreclosing Plaintiff from ever cross-examining him.

interest rate had remained continuously in force since his prior opinion (RA1-RA6).[4]

The District Court agreed with Dr. Bustamante that due to the absence of an "act or contract" stipulating a rate of interest, the various legal rates controlled in this case. It awarded Plaintiff prejudgment interest calculated on that basis totalling $532,608.71, for an aggregate judgment of $898,087.71 (A8).

The District Court did not, as Defendants put it, simply dismiss "out-of-hand" the Segovia v. Acosta case (upon which Defendants now rely exclusively) and formulate "its own theory for segmenting the interest calculation" (Pet. at 6). Quite the contrary, it reviewed all of the materials submitted,

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[4]This designation refers to Respondent's Appendix.

including the conflicting expert opinions. It relied not only on the conceded principle that "judicial decisions are not binding precedent in a civil law jurisdiction such as Ecuador[,] Phoenix III at 10 n.11,"[5] but on the language of Article 8 of Resolution 755 itself (B41-B42). Indeed, noting that Segovia referred only to the first sentence of the first paragraph of Article 8, the District Court reviewed the article as a whole, which the Segovia opinion did not do (B41-B42). It also reviewed various Civil Code provisions including those presented by Defendants. In sum, the District Court determined and applied

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[5]Defendants now characterize this principle as "assumed," "purported" and "dubious" (Pet. at i,3), notwithstanding the fact that another of their foreign law experts had, several years earlier, opined that "previous decisions are not binding in Civil law countries" (Schwind Aff. ¶ 20 at E3).

Ecuadorian law in precise compliance with Fed. R. Civ. P. 44.1.

Defendants' cross-appeal to the Court of Appeals claimed merely that the District Court should have followed their interpretation (based upon a partial English translation of Segovia)[6] and that it had erroneously interpreted and applied Ecuadorian law (RA55). They never presented, either in the District Court or the Court of Appeals, any of the arguments, now presented for the first time in their petition for certiorari, purporting to invoke the full faith and credit and due process clauses and the act of state and comity doctrines.

Answering Defendants' appeal as thus limited, Plaintiff appended to its Court of Appeals brief a copy of a judg-

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[6]See discussion infra at 15-16.

ment issued in a lower Ecuadorian court shortly after the District Court's decision, calculating prejudgment interest in a contract case.[7] The calculation (not reproduced in Petitioners' Appendix) used the increasing legal rates in force during the relevant time periods, thus confirming the correctness under Ecuadorian law and practice of the result reached by the District Court.

In response, Defendants annexed to their reply brief a new opinion from Dr. Andrade (RA27-RA29) accompanied by seven other lower Ecuadorian court judgments in which prejudgment interest had been calculated at a single rate (RA30-RA54). Dr. Andrade did not argue that the Garces v. Vallejo judgment was wrong, but he did contend that these seven

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[7] Garces v. Vallejo (7th Civil Court, Pichincha Province, 3/18/87) (RA14-RA21).

other judgments supported his opinion that a single rate should apply in this case (RA29).

Upon analysis, however, the additional judgments offered by Defendants showed themselves to be either distinguishable from the case at bar or else hopelessly inconsistent with each other, and in any event not supportive of Dr. Andrade's opinion. Thus:

- in three cases (RA37-RA51) the legal rate at the time of the summons was <u>not</u> the rate applied in the judgment;
- in three cases (RA34-RA36, RA43 - RA51) the legal rate <u>did not change</u> between the date of the summons and the date of the judgment;
- in one case (RA37-RA42) the rate applied by the court was <u>never</u> the legal rate;

- two cases (RA30-RA33) were governed by the law of checks, which does not apply here; and
- in one case (RA52-RA54), the interest calculated from the date of the "vouchers" (not the date of the summons) did not use the legal rate applicable at that date.

Moreover, in accordance with the absence of stare decisis in Ecuador, none of the subsequent judgments purported to follow, distinguish or reject the Segovia case, or even mentioned it.

Then, on a motion to supplement its brief, Plaintiff submitted a third opinion letter from Dr. Bustamante, dated March 24, 1987 (RA7-RA13), again confirming that due to the absence of a contractually stipulated rate, the applicable rates were the increasing legal rates during the relevant time period.

Petitioners omitted all of these highly relevant additional materials from their Appendix.

Based upon (a) the District Court's review and consideration of all the materials presented to it, and (b) the additional materials submitted to the Court of Appeals which supported the District Court's conclusion and also showed that the decision in Segovia, as interpreted by Defendants, is not necessarily followed by other Ecuadorian courts, the Court of Appeals affirmed the District Court's ruling on prejudgment interest (A25).

Defendants have now paid the judgment in full.

REASONS FOR DENYING THE WRIT

I. STARE DECISIS HAS NO APPLICATION IN ECUADORIAN LAW.

This principle, admitted by Defendants, has never before been challenged in this case. As a result, no extensive discussion of it was ever required.

Article 3 of Ecuador's Civil Code and Article 318 of its Code of Civil Procedure require the court in any case to rule only on the facts before it. A ruling binds only the parties to that litigation (RA57-RA58). Similar provisions exist in other Latin American codes. They continue to be regarded as an express prohibition against the development of case law. Schlesinger, Comparative Law, at 651 n.29 (5th Ed. 1988).

Even defendants have conceded that "[i]t is only by a line of cases tending

toward the same result, using the same reasoning," that a judicially created application of the law gains acceptance (E4) (emphasis supplied). In relation to the matter at bar, the Segovia decision is but one case, not a line of cases, and it therefore stands by itself in civil law eyes.

Moreover, Segovia is not even followed in Ecuador. Thus in Garces v. Vallejo, supra, the Ecuadorian court "segmented" prejudgment interest exactly as was done in this case (RA14-RA16), and Dr. Bustamante reported, after observing the practice of court appointed "liquidators" and consulting other lawyers, that this is the way interest is commonly calculated in Ecuador (RA2-RA3). Still further, as shown, the lower Ecuadorian court judgments Defendants submitted to the Court of Appeals

in response to Garces v. Vallejo were inconsistently decided. Those cases are thus relevant only to show that each case is decided on the basis of its particular facts.

Defendants' petition, stripped of rhetoric, is nothing more than a preposterous request that the United States create for Ecuador a rule of stare decisis antithetical to that country's civil law jurispudence and rigid even by our own common law standards. Although now couched in misleading constitutional considerations and the doctrines of comity and act of state, such a proposition fails to raise any issue worthy of this Court's attention on certiorari jurisdiction.

II. THE LOWER COURTS PROPERLY DETERMINED AND APPLIED ECUADORIAN LAW PURSUANT TO FED. R. CIV. P. 44.1.

The District Court and Court of Appeals did not fashion a "novel rule" as the Petition complains (Pet. at 6). They simply applied existing Ecuadorian law to the facts of the case by drawing, under Fed. R. Civ. P. 44.1, upon the same authorities as an Ecuadorian court would have done: the relevant code provisions,[8] other legislation and regulations, together with expert opinions as to how they apply. Since, as shown, Ecuadorian jurisprudence does not consider judicial decisions to have any ef-

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[8]Interestingly, Defendants now claim that Article 7 of the Civil Code -- which they themselves submitted in opposition to "segmentation" of interest rates and upon which their expert relied -- is "inapplicable" and "has nothing to do with the issue of whether the rate of prejudgment interest should be fixed or segmented." (Pet. at 6 n.7).

fect beyond the cases in which they are rendered, the lower courts in this case correctly took the same approach.

Defendants have never contended and do not contend here that there ever was a stipulation between the parties as to a rate of interest. Nor have they shown any reason why the judgment below was incorrect under the circumstances or so grossly out of step with the law of Ecuador to merit this Court's intervention.

As to the Segovia case, we further note that because Defendants only translated the proceedings in the court of the "Third Instance" but not the proceedings in the First and Second Instances, which materials had been included in the Spanish original of Dr. Andrade's affidavit, there is considerable uncertainty as to whether there had

or had not been an "act or contract" stipulating to the 6% interest rate ultimately applied in that case. Further, we have noted that the 8% interest rate was not requested prior to the proceedings in the Supreme Court, although the case had been initiated in the Court of the First Instance subsequent to the enactment of Resolution 755 increasing the rate to 8%.

III. DEFENDANTS' PURPORTED CONSTITUTIONAL AND OTHER ARGUMENTS ARE UNAVAILING.

In an attempt to salvage its hopeless insufficiency under both Ecuadorian law and Rule 44.1, the Petition purports to raise full faith and credit, comity, act of state and due process arguments. Because these arguments were not made below, they have not been preserved for appeal. Missouri Pacific Railroad Co.

v. Hanna, 266 U.S. 184 (1924); Louisville & Nashville Railroad Co. v. Melton, 218 U.S. 36, 50-52 (1910). Nevertheless we discuss each of them briefly.

(a)

Full Faith and Credit

Defendants' attempt to analogize the procedure required in this case to the full faith and credit clause (Pet. at 7) is misplaced. As this Court recently observed in Sun Oil Company v. Wortman, __ U.S. __, 56 U.S.L.W. 4601 (1988), the case upon which Defendants rely, at 4605 n.3:

> It cannot possibly be a violation of the Full Faith Credit Clause for a State to decline to apply another State's law in a case where that other State itself does not consider it applicable (emphasis by Court).

By the same token, it cannot possibly have been improper for the lower courts to decline to give precedential effect to the Segovia case when the record so amply demonstrates that Ecuador itself does not do so.

Furthermore, as Sun Oil also points out, even a misconstruction of a foreign state's law does not violate the full faith and credit clause unless it is shown that the misconstruction violates clearly established law that has been brought to the court's attention. 56 U.S.L.W. at 4605. The full record in this case showed nothing of the sort. The judgments Defendants offered (RA30-RA54), including the Segovia case (C29-C35), showed merely that the treatment of prejudgment interest rates varies in Ecuador according to the circumstances. The judgment Plaintiff offered (RA14-

RA21) and Dr. Bustamante's second letter (RA2-RA3) showed that "segmenting" is a perfectly proper method that is used when, as here, the court deems it appropriate.

Even if relevant, therefore, the Petition fails to make out even the remotest full faith and credit analogy.

(b)

Act of State

Without citation to authority, Defendants argue that the decision below is not consistent with "basic Act of State and Comity principles." (Pet. at 8) We discuss comity below. As to Act of State, that doctrine does not consider a judicial decision in a controversy between private litigants to be an act of state. See Restatement 3d, Foreign Relations Law of the United States,

§ 443 Comment (i). The Act of State Doctrine, which requires our courts to give effect to the acts of a foreign sovereign within its own territory, Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964), is therefore without any relevance whatsoever to the pre-judgment interest rate issue.

(c)

Comity

Defendants' comity argument is no more persuasive. In the abstract, of course, there can be no disagreement with the comity principles enunciated in Laker Airways v. Sabena Belgian World Airlines, 731 F.2d 909 (D.C. Cir. 1984), which Defendants quote at length (Pet. at 8). But the quote is irrelevant and out of context. Laker was a strict comity case in which the United States

court had been asked to give effect to a judgment of a foreign court between the same litigants. The same was true in Cunard S.S. Co. v. Salem Reefer Services AB, 773 F.2d 452 (2nd Cir. 1985), upon which Defendants also rely.

In neither of these cases had the United States court been asked to define and apply an abstract principle of foreign law in the same manner as a court of the foreign jurisdiction would have done. In fact, the court in Laker, under the unusual circumstances of that case, declined to extend comity to the English judgment in question. Neither Laker nor Cunard stand for the bizarre proposition that the lower courts in this case somehow violated comity principles by not adopting as a binding statement of law Defendants' interpretation of a single judicial decision be-

tween other litigants that has no force as precedent in Ecuador and is not even followed there.

(d)

Due Process

Finally, Defendants argue without analysis that the decision below "fosters forum shopping and uncertainty to the point of lawlessness and denial of Due Process." (Pet. at 3, 6). Once again, however, the case is the opposite. In regard to prejudgment interest, the lower courts acted just as Ecuadorian courts would have. And the one thing an Ecuadorian court would not and could not have done would have been to accord binding precedential value to the Segovia case or any other individual judicial decision.

If adherence to precedent, particularly one as questionable as Segovia, were to nevertheless be required as Defendants request, the result would be a fundamental alteration of the civil law system for cases that happen to be heard in our courts. Litigants who happen to have a jurisdictional basis for resorting to United States courts to resolve a dispute governed by the law of a civil law country would be encouraged to dredge up obscure judicial decisions in unrelated cases that were never intended to have precedential value, and to urge, as they could not in the jurisdiction concerned, that they be accorded stare decisis.

That scenario would be forum shopping at worst. It would inevitably permit our courts to do considerable violence to the law of other countries,

all in the name of applying that law. Plainly, therefore, it is the relief Defendants request, not the judgment made or the method used by the courts below, that would bring about the mischievous result Defendants so roundly condemn.

IV. THE INCOMPLETE PRESENTATION IN DEFENDANTS' PETITION MISREPRESENTS THE RECORD BELOW AND IS REASON ENOUGH TO DENY THE WRIT.

Supreme Court Rule 21(g) requires that a petition for certiorari state "the facts material to the consideration of the questions presented." To comply with this rule, a petitioner must disclose more than merely those fact it deems favorable to its statement of the issue. This Court has long emphasized "the necessity for clear, definite and complete disclosures concerning the controversy when applying for certiorari."

Southern Power Co. v. North Carolina Public Service Co., 263 U.S. 508 (1924).

In this case the Petition:

- omitted to disclose two subsequent opinions by Plaintiff's expert (RA1-RA13) which clearly reiterated his earlier opinion that the prejudgment interest calculation should be "segmented";
- argued contrary to the record that "Dr. Bustamante did not opine that prejudgment interest should be segmented" (Pet. at 5, 6);
- omitted to disclose the judgment in Garces v. Vallejo, which had "segmented" a prejudgment interest calculation exactly as the District Court did (RA14-RA16); and
- omitted to disclose their own expert's subsequent opinion and the inconsistent judgments he presented

which demonstrated at best a lack of uniformity on the issue.

Based upon the above omissions, Defendants sought to present the Segovia case as the governing law of Ecuador when the full record shows that it is not, and is not even followed there.

This Court has not hesitated to dismiss a writ of certiorari after a fuller development of the record showed that "[t]he inducing petition failed to give adequate information concerning the record and the facts." See, e.g. Erie Railroad Co. v. Kirkendall, 266 U.S. 185 (1924).

The record before the lower courts on the interest rate issue shows that the grounds the Petition advances in its truncated presentation seeking certiorari have no basis in fact. Defendants' failure to fully inform the Court of

"the facts material to consideration of the questions presented" by their petition should by itself be sufficient reason for denying the writ.

CONCLUSION

The petition is patently without merit and should be denied.

Dated: New York, New York
September 26, 1988

Respectfully submitted,

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APPENDIX

RESPONDENT'S APPENDIX

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PEREZ, BUSTAMANTE Y PEREZ
[Letterhead]

Quito, November 20, 1986

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REF: Phoenix Canada Oil Company
vs Texaco et al
Interest rates

Dear Mr. Muskin:

Reference is made to your oral request. I am pleased to update the information given in my letter dated June 11, 1985.

Subsequent to that date, Regulation No. 367-86 was issued by the Monetary Board on August 11, 1986. It was published in Official Register No. 507 of August 25, 1986. According to this Regulation, the legal interest rate is maintained at 23%, and at 23%, plus 4% in the event of default, the highest conventional rate

for every such operation in which the Monetary Board does not permit to freely agree on the rate.

The novelty of this Regulation is that it allows "Freely agreed" rates.

Interest rates for certain passive operations of banks and financial institutions (i.e. savings deposits, longer term deposits, etc.) are freely agreed to and, as a general rule, also interest rates for active operations of such banks and institutions.

As a matter of fact, such free rates for active operations such as loans have increased to 32%, 33%, 34% and higher, per annum, according to the term for maturity and other considerations.

According to the practice observed by liquidators employed by the courts, and

after having consulted the opinion of other lawyers concerning the matter of seetling the interest accrued for default from the summons until the date of payment, I ratify my opinion as per my letter dated June 11, 1985, whereby interest must be settled and paid according to the different interest rates in force during the respective periods of time. Therefore, the 23% rate will apply as of December 11, 1984, and the 8%, 15%, 16%, 19%, and 21% on the respective periods of time mentioned in my letter.

The principal legal rules concerning the right to demand payment of interest are the following:

Article 1602 of the Civil Code: According to this provision, if the obligation is to pay a certain amount of money,

indemnity for damages for the default consists in paying conventional interest if an interest higher than the legal interest has been agreed or, on the contrary, the legal interest is due.

According to Article 1594 of the Civil Code, if no term has been agreed, the debtor is in default since the time the debtor has been judicially claimed by the creditor. This claim is complied with by means of a service of summons pursuant to Article 99 (5) of the Civil Procedures Code. Therefore, the debtor is in default and owes at least legal interest as of the summons or as of the end of the term, if a term has been agreed.

According to Article 2136, the conventional interest cannot exceed the maximum rate (highest conventional rate)

fixed in accordance with the Law.

In accordance with Article 2137: "The legal interest is the rate determined by the State's competent organization".

This organization is the Monetary Board. The last paragraph of Article 88 of the Monetary Regime Law states that: "The Monetary Board shall also fix the legal interest rate referred to in the Civil Code."

The Monetary Board also determines "the highest conventional rate". In this regard, article 88 of the Monetary Regime Law reads as follows: "The Monetary Board shall likewise fix in a general and uniform fashion the maximum interest rates that banks may charge their debtors for the different kinds of loans and for any other active operations they may carry out."

And paragraph 1 of Article 189 of that same law says: "Civil or commercial conventional interest cannot exceed the maximum rates fixed in accordance with this Law for banking operations."

Very truly yours,

/s/ RENÉ BUSTAMANTE M.
René Bustamante M.

mch/62367

PEREZ, BUSTAMANTE Y PEREZ
[Letterhead]

Quito, March 24, 1987

Mr. Victor P. Muskin
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Re: Phoenix Canada vs Texaco et al.

Dear Victor:

Reference is made to your letter of February 5, 1987, and to our telephone conversation of today's date. I wish to advise you the following:

I confirm my opinion given to Mr. Donald Moore when he asked me about the scope of the transitory provision in Regulation N° 967-86 issued by the Monetary Board on August 11, 1986, and published in the supplement of Official Register N° 507 of August 25, 1986. This pro-

vision reads as follows: "The provisions of this Title shall apply to any acts and contracts executed as of August 12, 1986. Therefore, interest rates and fees stipulated in any acts or contracts executed prior to that date, either already accrued or to be accrued, shall continue in effect until the expiration date agreed upon in the respective act or contract."

Several regulations from the Monetary Board establishing a new interest rate system - from N° 545 of 1970 to N° 367 of 1986 - contain transitory provisions similar to the foregoing, and what we say concerning it is, logically, applicable to all the others.

In my opinion such transitory provisions are applicable only to acts and contracts, and we should make the following

differentiations:

1. Those executed as August 12, 1986 to which the provisions of the new regulations and therefore new interest rates apply.

2. Those executed prior to that date to which the interest rates stipulated in such acts and contracts apply until their end of term. In this connection, the following conditions would be required:

2.1. That an interest has been stipulated for;

2.2. That a term has been provided for or agreed to.

In consequence, the new interest rates will also apply to (1) any obligations not derive from acts or contracts (2) any obligations that derive from acts or

contracts wherein interest rate or term have not been provided for.

In such cases, the applicable interest rate must be the legal interest rate.

The new legal interest rates will therefore be applicable to any obligations derived from legal causes other than acts or contracts such as, for example, quasicontracts, as it would be the case of restitution of undue payment which should be made together with legal interest as from the date of summons, in accordance with different rates established by the Monetary Board during the time elapsed until restitution of the amount unduly received.

This would also be applicable to restitution or actio in rem verso for unjust enrichment and indemnity obliga-

tions derived from offenses (tort) or quasi offenses (negligence).

In the event of indemnities for damages by reason of breach or default under a contract, such as when cancellation of a bilateral contract is claimed because one of the parties fails to perform its agreed obligations, there is the right to recover the amounts paid to the defendant under the contract plus legal interest since the date of the summons. It is precisely to such a case that the enclosed settlement of interest refers to. This was made by an expert appointed by the Seventh Civil Judge of Quito in a plenary suit filed for contract cancellation by Mrs. Sonia Fabara Garces against Mrs. Lucia Mackliff de Vallejo. I am enclosing this settlement.

In this settlement you will see that interest has been settled at successive 15%, 16%, 19%, 21% and 23% rates per annum, as fixed by different regulations from the Monetary Board, as per the criterion set forth in my letter of June 11, 1985.

Concerning this settlement, I only wish to observe that Regulation N° 125 (Official Register 608 of October 27, 1983) has been omitted. This regulation increased the interest rate to 19%. Official Registry N° 689 of February 22, 1984, which promulgated Regulation N° 151, has instead been cited which I did not mention in my letter because it merely confirmed that the legal interest rate was still 19%, as fixed in October 1983. Therefore, the settlement should have applied the 19% rate since October 1983, and not since February 1984.

I hope that this information will be useful to you.

Best regards,

/s/ RENÉ BUSTAMANTE MUÑOZ
René Bustamante Muñoz

Enclosures

YOUR HONOR, JUDGE OF THE SEVENTH CIVIL COURT:

I, Jaime Andres Romero Alban, having been designated by you as an expert for liquidating the capital and interests at the Ordinary Lawsuit (Contract Resolution) brought by Mrs Sonia Fabara Garces against Mrs Lucia Mackliff de Vallejo, present you and the parties the following brief:

CAPITAL ..... S/1'700.000,00

The interests have been liquidated according to the legal interests in force and published in the following Public Records: P.R.158 January 11, 1982 - 15%; P.R.455 March 19, 1983 - 16%; P.R.689 February 22,

1984 - 19%; P.R.773 June
26, 1984 - 21% and P.R.90
December 10, 1984 - 23%;

Six months and twenty
eight days of interest,
15% per year 147.333,24

Eleven months and two
days of interest, 16%
per year 250.844,36

Four months and three
days of interest,
19% per year 110.358,06

Five months and twenty
three days of interest,
21% per year 171.558,18

One year, six months and
twenty six days of
interest, 23% per year
July 16, 1986 date of

consignment of S/2'000.000,00	614.738,84
Seven months and eight days of interest, 23% per year, from July 17, 1986 to February 25, 1987; date of the second consignment interest calculated on the balance	138.558,13
Seventeen days of interest, 23% per year, from February 26, 1987 till today, interest calculated on the balance	5.620,03
TOTAL INTERESTS	S/1'439.010,84
TOTAL CAPITAL AND INTERESTS	3'139.010,84

+ LAND TAX 1981		7.237,00
+ CARRIED OUT IMPROVEMENTS		40.120,00
MINUS:		
1980 LEASE	-	7.500,00
LEASE FROM JULY 1982 TO MAY 1986	-	352.500,00
CONSIGNMENT CARRIED OUT ON JULY 16, 1986	-	2'000.000,00
CONSIGNMENT CARRIED OUT ON FEBRUARY 25, 1987	-	615.936,90
TOTAL PAYMENT DUE		210.430,94

TWO HUNDRED TEN THOUSAND FOUR HUNDRED THIRTY SUCRES AND NINETY FOUR CENTS ARE DUE BY Mrs LUCIA MACKLIFF DE VALLEJO TO Mrs SONIA FABARA GARCES. This is all what I may report to the truth. Barring error or omission.

Quito, March 13, 1987 (signature)

Jaime Andres Romero Ablan
Expert

NOTE FROM TRANSLATOR:

There are 4 stamps and 3 not completely legible seals on the left side of the page. It can be read: Civil Court PICHINCHA, Quito, Ecuador.

YOUR HONOR, JUDGE OF THE SEVENTH CIVIL COURT OF PICHINCHA.

I Liquidate court costs caused in this lawsuit, in charge of the defendant Lucia Mackliff Vallejo, as follows:

Value of the folios 1,2,3,4, 5,6,7,9,8, 10,11,13,14,15, 16,17,23,24, S/10,00 each	S/	170,00
Value of the folios 18,19, 25,26,28,29,30,35,36,39, 40,41,42,44,45,58,60,61, 66,67,68,69,72,73,76,77, 78,79,80,83,86,87,88,92, S/59,00 each	S/	2006,00
Clerk's right.....	S/	38,00
Fees of Plaintiff's Advocate	S/	10000,00
For this liquidation .....S/		300,00

TOTAL .....S/ 12508,00

The present liquidation amount to TWELVE THOUSANDS FIVE HUNDRED AND EIGHT SUCRES

s,e,u,o

Quito, March 18 1987
(Signature)

Presented today, Tuesday March seventeen, one thousand nine hundred and eighty seven at 9 am. - I CERTIFY -

(Signature)
The secretary.
(Seal)
7th CIVIL COURT OF PICHINCHA.
QUITO.ECUADOR

SEVENTH CIVIL COURT OF PICHINCHA.Quito, March 18, one thousand nine hundred and eighty seven - 4 pm. Give the parties judicial notice of the practiced liquidations, during the term of twenty four hours. Notify.

(Signature)
Dr. Jorge MAZON JARAMILLO

LANGUAGE ENTERPRISE
[Letterhead]

September 8, 1987.

I, Carlos A. Lista, translator at Language Enterprise, hereby certify that I translated the attached Liquidations at the Lawsuit brought by Mrs Sonia Fabara Garces against Mrs. Lucia Mackliff de Vallejo. I am Knowledgeable in Spanish and English and I certify that the translations are true and correct, barring error or omission.

/s/ Carlos A. Lista

9/9/87 /s/ Joseph Schwartz
Notary Public

EXCERPTS FROM TRIAL TESTIMONY OF DR. RENE BUSTAMANTE MUNOZ

Bustamante - direct

. . . DR. RENE BUSTAMANTE, having been duly sworn as a witness, through the Interpreter, was examined and testified, through the Interpreter, as follows . . .

DIRECT EXAMINATION

BY MR. MUSKIN:

Q. Dr. Bustamante, would you please state to the Court where you live?

A. I live in Quito, Ecuador.

Q. Sir, what is your occupation?

A. My occupation is attorney.

Q. How long have you practiced as an attorney?

A. I have practiced law since 1949.

Q. Have you practiced continuously since that time?

A. I have practiced continuously from that time, with certain interruptions when I have been elected to public office.

Q. Sir, could you please state your educational background for the Court?

A. I studied law in the Central University of Ecuador, where I obtained a degree of Doctor in Juris Prudence and attorney.

Q. Are you a member of a law firm?

A. I am a member of the Quito Bar Association.

Q. And are you a member of a law firm?

A. Yes, I am a member of the law firm called Perez, Bustamante and Perez.

Q. For how long have you been a member of that law firm?

A. I have been a member of this law firm since 1949. But before I worked one year as an employee.

Q. What is the nature of the practice of the law firm of Perez, Bustamante and Perez?

A. My firm works in several branches of the profession, mainly corporation law, companies, contracts, hydrocarbon or petroleum law, mines, industrial trademarks, patents, copyrights, intellectual property.

Q. Sir, have you held any public positions in Ecuador?

A. Yes, I have held public positions in Ecuador.

Q. What positions have you held, sir?

A. I have been Superintendent of Companies, Superintendent of Banks, Secretary of Congress. Those are the main ones.

Q. Now, sir, during what period of time were you Superintendent of Companies?

A. I was Superintendent of Companies from 1967 to 1968, but before I was in the same functions with the title of Intendente of Companies.

THE INTERPRETER: Which means auditor, inspector.

BY MR. MUSKIN:

Q. During what period of time, sir, were you Superintendent of Banks?

A. I was Superintendent of Banks from 1971 to 1974.

Q. Do you hold any teaching positions, sir?

A. Yes. I hold a teaching position as a Professor of Civil Law in the part related to torts and contracts, obligations.

Q. Did you mention where you teach, sir?

A. I teach in the Catholic University of Ecuador in Quito.

Q. For how many years have you been teaching there?

A. I teach since 1949.

Q. Sir, what is your personal area of legal practice?

A. Mainly I practice matters with regard to companies, corporations, industrial property and civil contracts.

* * *

GUZMAN
ANDRADE
SALGADO

ATTORNEYS AT LAW

Dr. Miguel Andrade Varea

Quito, October 1, 1987

Milton Sherman, Esq.
KAYE, SCHOLER, FIERMAN, HAYS & HANDLER
425 Park Avenue
New York, New York 10022

Dear Mr. Sherman:

In response to your request, I have researched the archives of the Civil Courts of Pichincha, Ecuador (the province where the city of Quito is located), to find cases in which the interest for delay have been awarded in a) breach of contract cases, where the contracts do not stipulate a rate of interest in the event of a breach; or b) other cases, such as lack of payment where there is no stipulated interest rate.

From my research, I have determined that in almost every case in which interests for delay were awarded the interest rate used is the interest rate in effect, either at the time the action is commenced -- service of the complaint -- (in breach of contract cases), or on the date in which the obligation had to be paid (in non-payment cases). Consequently, that interest rate is applied in a fixed and unchangeable manner for the entire period during which interests are calculated, regardless of the changes in the legal interest rate during that period.

I have sent to you liquidations prepared for cases decided in the First, Second, Third, Fifth, Ninth and Tenth Civil Courts in which the legal rate of interest in effect when the action was commenced has been applied -- service of

the Complaint -- or when the obligation became due. These liquidations give additional support to my opinion, contained in my declaration rendered on December 9, 1986, that it is customary practice in Ecuadorian courts to calculate interests for delay in a breach of contract case at the legal interest rate in effect on the date the action is commenced and that that rate is applied for the entire period from the beginning of the action until the rendering of judgment and the appropriate payment, even if the legal interest rate changes during that period.

Yours truly,

[illegible signature]
Dr. Miguel Andrade Varea

Orellana and Pinzon Avs.
Pinzon Building, 4th Floor.
Telephones: 527-750 and 543-201.
P.O. Box 9021 S.7
Quito - Ecuador.

SUMMARY VERBAL PROCEEDINGS
CASE NO. [illegible]

PLAINTIFF: ANTONIO VIVAR BAQUERO
DEFENDANT: AIDA MUNOZ DE PAZMINO

[illegible handwritten entry]

HONORABLE JUDGE OF THE FIRST CIVIL COURT OF PICHINCHA:

I, Oilo Cevallos Quevedo, acting as liquidating expert of the credit in this case, issue the following report:

I am proceeding to liquidate the interest produced by principal owed in accordance with the disposition made in the sentence pronounced regarding this case. Liquidating, we have the following:

Check, principal S/100,000.00

Date of Protest 16 June 1982.

Interest according to
disposition by sentence 15%.

Interest produced in 3 years,

5 months and 11 days
equals ..... S/ 52,477.93

THEY ADD TO: S/152,477.93

The total is ONE HUNDRED AND FIFTY-TWO THOUSAND FOUR HUNDRED SEVENTY-SEVEN SUCRES AND NINETY-THREE CENTS, by way of principal and interest up to the present date S.E.u.O._._._._.

Quito, 27th of November 1985.

[signed]
THE EXPERT.

Filed today, the twenty-seventh of November nineteen hundred eighty-five, at 10:00 A.M., with like copy.

-I CERTIFY-

ANIBAL LEON ALCOCER
[signed, illegible]
Clerk, 1st Civil Court -
Pichincha

HONORABLE JUDGE OF THE SECOND CIVIL COURT OF PICHINCHA:

I, Lucia Toledo P., having been designated Expert by your power to proceed to liquidate the Credit owed within Verbal Summary Proceeding No. 960/82 filed by Francisco Ponce Yepez, Manager of "Ponce Yepez" C. de Comercio S.A., against Gonzalo Charvet and Carlos Stael, with the corresponding oath, present for your consideration the following report:

C[apital]	=	S/47,934.60
I[nterest]	=	8%
T[ime]	=	6 years
		4 months
		18 days

S/24,476.04 (Interests Produced)

S/47,934.60 (Principal)
S/72,410.64

THE TOTAL OF PRINCIPAL AND INTERESTS OWED BY THE STOCKHOLDER AMOUNTS TO SEVENTY-TWO THOUSAND FOUR HUNDRED TEN AND SIXTY-FOUR CENTS. S.e.u.O.

Quito, 28th of September 1987

(illegible signature)

The Expert

[Stamps] HONORABLE THIRD CIVIL JUDGE:

I, Carlos Fernandez, expert named by your Authority and under oath, submit the following report refarding the summary verbal proceeding filed by Dr. Fidel Egas Grijalva, as President and Legal Repersentative of "Diners Club del Ecuador, S.A." against Alfredo Del Salto Bello and Wilson Torres Sanchez:

Principal of Record of 38 vouchers fs	S/36,252.10
Interest produced at 23% annual since the date of the summons of the suit (2 April 1985) until the present date, 9 June 1986	S/ 9,889.85
SUM TOTAL OF PRINCIPAL OWED	S/36,252.10
Interest Produced	S/ 9,889.85
TOTAL OWED	S/46,141.95

BEING: Forty-six thousand one hundred forty-one sucres and ninety-five cents.

S.E.O.U.

Quito, 9th of June 1986
The Expert
[illegible signature]
Carlos Fernandez

10:00 A.M. - THIRD CIVIL COURT: Quito, 17th of June 1986: Make the preceding report known to the parties for the period of forty-eight hours. So be notified.

(signature, illegible)
Dr. Efren Gavilanes Real
JUDGE,

In Quito, seventeenth of June nineteen hundred eighty-six, at 5:00 P.M., I notified Dr. Fidel Egas G. of the preceding report and judgment at casillero G, No. 625. I am not notifying Alfredo

Salto del Bello and Wilson Torres Sanchez because there is no [illegible] casillero J. I so certify.

[illegible signature]
[illegible print]
CHIEF CLERK

JURIDICIAL COLLECTION OFFICE
DR. JAIME AILLON ALBAN

HONORABLE JUDGE OF THE FIFTH CIVIL COURT:

I, EDUARDO RODRIGUEZ FREIBERG, General Manager of Fabrica de Cigarrillos [Cigarette Manufacturing], "EL PROGRESO, S.A.", in the summary verbal proceeding I have filed against Mr. LUIS AQUINO NEGRO, in his capacity as General Manager of BANCO DEL PACIFICO, S.A., state the following:

Once the final judgment in this proceeding has been handed down I request that you designate an expert for the liquidation of principal and interests and send the proceeding to the Costs Liquidator, if necessary.

The day and time for possession by the expert will be indicated and a dead-

line will be set for him to file his report.

For the party appearing, his Advocate.

June 1, 1983

[illegible signature]
Alcides Redin G.
CLERK

FIFTH CIVIL COURT OF PICHINCHA: -
Quito, June 2, 1985 - at 4:50 p.m.

In response to the preceding document, the liquidation of principal and interests by means of Mr. Rodrigo Aulestia, whom I name expert, is to be performed, and he is to issue his sworn report within two days; once done, the proceeding is to go to the Costs Assessor, and the parties are to be notified. Be so advised.

[illegible signature]
Dr. Rafael Palacios D.
JUDGE Quito, June 2, 1983

I CERTIFY Alcides Redin G.
CLERK

REASON: Quito, June second nineteen hundred eighty-three, at five p.m. and five hours and five minutes p.m. I notified through cards Eduardo Gutierrez and Francisco Aquino Negro of the above

decision and document, at Boxes 852 and 160 respectively. I Certify.

[illegible signature]
Herman Castillo A.
CHIEF CLERK

[stamps]

PARLIAMENT 4th Floor Rm. 404 159 6th of December Ave. and Pazmino. Telephones: 544257 549916 - 552267 Quito - Ecuador

Your Honor:

Rodrigo Aulestia, expert named by your Authority to liquidate [illegible] principal and interest in the present proceeding in accordance with the law, I state:

By means of executed sentence it is determined that the defendant, Banco del Pacifico, pay the plaintiff, Fabrica de Cigarrillos "El Progreso" the [illegible] S/323,546.13, consequence, of improper payment of check in register [illegible] the 12% annual interest since the summons with the suit, done [illegible] the twenty-four of February 1982; accordingly we have the following:

Principal	S/323,546.13
INTEREST 12% yearly, time elapsed:	
1 year at S/38,825.53 per year	S/ 38, 825.53

3 months at S/3,235.46 per month	S/ 9,706.38
12 days at S/107.84 per day	S/ 1,294.18
	S/373.372.22

BEING THREE HUNDRED SEVENTY-THREE THOUSAND SEVENTY-TWO SUCRES TWENTY-TWO CENTS. S.E.O.U.

This is all I can truthfully state unless you [incomplete word].

Quito, June 6th 1983

Yours truly,

Rodrigo Aulestia E.
EXPERT
C.C.No. 1000845691

Received in Quito, on June 6th nineteen hundred eighty-th [incomplete] at 3:20 PM. I so certify.

[illegible signature]
ALCIDES HEDIN C.
CLERK

(Seal)
Republic of Ecuador
Supreme Court of Justice

THE HONORABLE JUDGE OF THE NINTH CIVIL COURT

I, Edgar Cajas Suarez, designated expert to liquidate principal and interest within the verbal summary proceeding sought by Mr. Edwin Guerrero Blum against Miguel Stacio Vidal and Ernesto Estupinan, submit to you under oath the following report:

The stated sum of	S/113,973.00
in this case at 19% annual since the filing of the suit October 24, 1985, 455 days having elapsed by January 29 of this year, yields an interest of . . .	S/ 27,369.34
TOTAL	S/141,342.34

BEING: ONE HUNDRED FORTY-ONE THOUSAND THREE HUNDRED FORTY-TWO SUCRES AND THIRTY-FOUR CENTS. S.e.u.o.

A fact which I communicate to you for legal purposes.

Quito, January 29, 1987. -

[Illegible signature]
EDGAR CAJAS SUAREZ
EXPERT

HONORABLE NINTH CIVIL JUDGE OF PICHINCHA,

I liquidate court costs arising from this proceeding, in charge of the defendant Miguel Stacio Vidal - (secretary general of the State Oil Refinery Workers Union) Ernesto Estupinan, as follows:

Value of 1, 2, 3, 4, 5, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, at the rate of S/10.00 each	S/ 470.00
Value of folios 3, 6, 7, 9, 8, 10, 11, [erasure], 55, 56, 57, 58, at the rate of S/28.00 each . . .	S/ 336.00
Clerk's rights	S/ 46.00
Fees of Dr. Filadelfo Romero	S/8,000.00
For this liquidation	S/ 300.00
TOTAL SUM	S/9,452.00

The present Liquidation comes to the amount of NINE THOUSAND ONE HUNDRED FIFTY-TWO SUCRES s,e,u,o.

Quito, March 20, 1987

[Illegible signature]

Ninth Civil Court - Quito, July 6, 1987; at 9:10 AM. Give notice of the preceding liquidations to the parties for a period of three days so that they may approve them or observe them. So advise.

[Illegible signature]

In Quito, July sixth, nineteen hundred eighty seven, at 5:00 PM, I notified Mr. Edwin Guerrero at slot No. 504 of the preceding judgment. I certify.

[Illegible signature]
The Chief Clerk

REASON: I did not notify Miguel Stacio Vidal and Ernesto Estupinan because they had not designated a judicial slot. - Quito, July 6, 1987. - I certify. -

[Illegible signature]
The Chief Clerk

HONORABLE JUDGE OF THE TENTH CIVIL COURT:

I, CESAR CABEZAS, designated expert to effect the liquidations of principal and interests in default in the summary verbal proceeding filed by DR. FIDEL EGAS GRIJALVA, president and legal representative of DINERS CLUB DEL ECUADOR, S.A., against MRS. DEYSE ROCIO OLARTE DE ESTRELLA, very respectfully submit to you the following report:

According to the sentence pronounced on April 9, 1987, the defendant must pay the sums of S/521,774.96, and S/8,173.11, these last having to be liquidated in sucres, at the rate of exchange in effect in the free market at the time of cancellation.

In the free market, at the present date, the dollar is quoted at S/166.00 each one, reason for which the amount of S/8,173.11 is equivalent to S/.1,356,733.20, which added to the S/521,774.96, produce a total owed by the principal of S/1,878,511.16.

Interests in default (19% annual in effect on the date of issue of the vouchers) must be calculated since the date of the summons with the lawsuit, July 18, 1985, that is, for one year, nine months and four days.

These interests come to S/628,570.65.

In summary, by way of principal and interests in default the defendant must pay the plaintiff the sum total of

S/2,507,081.81 (TWO MILLION FIVE HUNDRED SEVEN THOUSAND EIGHTY-ONE AND 81/100 SUCRES), as follows:

Principal	S/1,878,511.16
Interests	S/ 628,570.65
TOTAL	S/2,507,081.81

This is all I can truthfully report.

Quito, April 22, 1987

[Illegible signature]
CESAR CABEZAS
Expert

HONORABLE JUDGE OF THE TENTH CIVIL COURT OF PICHINCHA,

I liquidate court costs caused in this proceeding, in charge of the defendant Deyse Rocio Olarte Bolanos de Estrella as follows:

Value of folios 1, 2, 3, 4, 7, 10, 12, 13, 14, 15, at S/10.00 each . . .	S/	100.00
Value of folios 8, at S/ .59.00		59.00
Value of folios 16, 17, 20 at S/.24.00 each . . .		72.00
Clerk's rights		38.00
Fees of Plaintiff's Advocate		85,000.00
For this Liquidation		300.00
TOTAL SUM	S/	85,569.00

This liquidation amounts to EIGHTY-FIVE THOUSAND FIVE HUNDRED SIXTY-NINE SUCRES, s,e,u,o.

Quito June 17, 1987

[Illegible signature]
[stamp]

HONORABLE JUDGE OF THE TENTH CIVIL COURT OF PICHINCHA:

I, CESAR CABEZAS, in my capacity as liquidating expert, in the case filed by Doctor Fidel Egas Grijalva, President of Diners Club of Ecuador against Mr. Silvio Gabriel Giler Moreira, submit under oath the following report:

Value of the VOUCHER	INTEREST 16%	DATE OF DRAFT	TIME DUE	INTEREST EARNED
1,750.00	16%	7 July '82	1,707 Days	1,314.39
525.00	16%	1 Oct '82	1,621 days	372.83
915.00	16%	12 Aug '82	1,671 days	641.20
930.00	16%	30 July '82	1,684 days	690.44
4,700.00	16%	18 Aug '82	1,665 days	3,429.90
322.00	16%	29 July '82	1,685 days	234.90
400.20	16%	29 July '82	1,685 days	303.30
115.00	16%	31 July '82	1,683 days	84.15
184.00	16%	6 Aug '82	1,677 days	134.16
293.00	16%	6 Aug '82	1,677 days	201.24
902.00	16%	6 Aug '82	1,677 days	654.03
690.00	16%	3 Aug '82	1,680 days	504.00
1,650.00	16%	3 Aug '82	1,680 days	1,209.60
1,440.00	16%	31 July '82	1,683 days	1,060.29
3,600.00	16%	3 Sep '82	1,649 days	2,588.93
472.65	16%	1 Sep '82	1,651 days	330.20
1,785.00	16%	2 Oct '82	1,620 days	1,263.60
2,520.00	16%	17 Sep '82	1,635 days	1,798.50
156.40	16%	11 Aug '82	1,672 days	100.32
2,190.75	16%	31 July '82	1,683 days	1,615.68
4,964.30	16%	3 Oct '82	1,619 days	3,513.23
2,475.95	16%	3 Oct '82	1,619 days	1,748.52
2,200.00	16%	31 July '82	1,683 days	1,615.68
1,850.00	16%	2 Sep '82	1,650 days	1,336.50
230.00	16%	2 Sep '82	1,650 days	165.00
1,400.00	16%	17 Sep '82	1,635 days	997.35
411.00	16%	17 Sep '82	1,635 days	294.30
150.00	16%	17 Sep '82	1,635 days	98.10
2,945.00	16%	16 Sep '82	1,636 days	2,110.44

350.00	16%	2 Sep '82	1,650 days	247.50
1,221.00	16%	3 Mar '82	1,803 days	955.59
200.00	16%	25 Aug '82	1,690 days	135.20
2,078.55	16%	17 Sep '82	1,635 days	1,487.85
920.00	16%	29 Sep '82	1,623 days	649.20
920.00	16%	29 Sep '82	1,623 days	649.20
2,042.40	16%	1 Oct '82	1,621 days	1,838.16
638.00	16%	20 Nov '82	1,562 days	421.74
1,400.00	16%	16 Sep '82	1,636 days	997.96
1,400.00	16%	30 Sep '82	1,622 days	989.42
1,081.00	16%	10 Nov '82	1,581 days	743.07
500.00	16%	28 Oct '82	1,594 days	334.74
2,557.60	16%	11 Nov '82	1,580 days	1,580.00
3,700.00	16%	30 July '82	1,684 days	2,728.08
1,810.00	16%	30 July '82	1,684 days	1,330.36
1,400.00	16%	22 Oct '82	1,598 days	974.78
1,450.00	16%	7 Nov '82	1,584 days	997.92

[stamps]
continued . . . / . . .

3,850.20	16%	31 July '82	1,683 days	2,827.44
2,687.55	16%	6 Aug '82	1,677 days	1,962.09
6,419.40	16%	6 Aug '82	1,677 days	4,712.37
4,685.10	16%	10 Oct '82	1,612 days	3,323.05
632.50	16%	27 Aug '82	1,688 days	455.76
462.00	16%	28 Oct '82	1,621 days	324.20
1,029.50	16%	4 Oct '82	1,618 days	728.20
552.00	16%	11 Nov '82	1,580 days	379.20
3,600.00	16%	28 Oct '82	1,621 days	2,544.97
1,273.44	16%	28 Oct '82	1,621 days	891.55
4,971.90	16%	23 Oct '82	1,626 days	3,528.42
1,215.00	16%	26 Oct '82	1,623 days	860.19
517.50	16%	13 Oct '82	1,609 days	353.98
882.00	16%	9 Oct '82	1,613 days	612.94
5,559.10	16%	10 Oct '82	1,612 days	3,917.16
1,535.00	16%	13 Oct '82	1,609 days	1,078.03
1,200.00	16%	11 Sep '82	1,641 days	853.32
938.70	16%	11 Nov '82	1,580 days	647.80

S/107,846.99 PRINCIPAL INTERESTS S/77,472.22

PRINCIPAL CLAIMED S/107,846.99

INTERESTS EARNED UNTIL
MARCH 16, 1987 . . . . . 77,472.22

TOTAL OWED S/185.319.21

ONE HUNDRED EIGHTY-THOUSAND THREE HUNDRED NINETEEN SUCRES AND 21/100 (S/185,319.21), S.e.u.o.

Respectfully,

(illegible signature)
Cesar Cabezas
EXPERT

EXCERPT FROM DEFENDANTS' BRIEF TO THE THIRD CIRCUIT IN SUPPORT OF THEIR CROSS-APPEAL

STATEMENT OF ISSUES AND SCOPE OF REVIEW

* * *

B. Defendants' Cross-Appeal

* * *

2) Whether the District Court erred in calculating prejudgment interest on a segmented basis and thereby applied to plaintiff's recovery in United States dollars the double-digit legal rates of interest Ecuador's Monetary Board had fixed based on the drastic decline in value of Ecuador's currency? The scope of review is plenary. Mobile Marine Sales, Ltd. v. M/V Prodromos, 776 F.2d 85, 90 (3d Cir. 1985); 5 Moore's Federal Practice ¶ 44.1.05 at 1657 (1986).

* * *

EXCERPT FROM AFFIDAVIT
OF JOSE M. RUMAZO, SWORN
TO ON FEBRUARY 18, 1981

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

----------x

PHOENIX CANADA OIL
COMPANY LIMITED,

Plaintiff,

-against- AFFIDAVIT

TEXACO, INC., GULF OIL CORPORATION, TEXACO PETROLEUM COMPANY and ECUADORIAN GULF OIL COMPANY,

Civil Action
No. 76-421

Defendants.

----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

JOSE M. RUMAZO, being duly sworn deposes and says:

1. I am an attorney practicing with the firm of Perez, Bustamante y Perez in Quito, Ecuador, and have been

duly licensed to practice law in Ecuador since 1969. I received a Doctor at law degree from the Catholic University of Ecuador. My experience includes a professorship at the Law School of the Catholic University of Ecuador since 1970 where I taught commercial and corporation law and banking law. I am fluent in both Spanish and English.

* * *

5. . . . [A] judicial precedent would not be conclusive in any event if Ecuadorian law were to be applied. In the Civil Courts of Ecuador, there is no such thing as controlling precedent; the concept of "overruling" is not known to my country's legal system. Each court is required to rule only on the facts before it and its decision binds only those parties and decides only that

litigation, according to Article 3 of the Civil Code and Article 318 of the Code of Civil procedure.

* * *

/s/JOSE M. RUMAZO
Jose M. Rumazo

Sworn to before me this
18th day of February, 1981.
Edward Nathan
Notary Public
#2851335
expires 3/30/81